

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

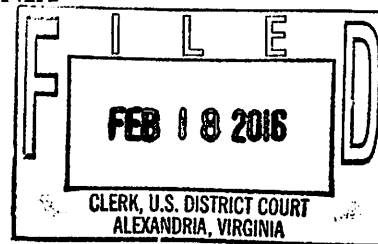
JO ANN SIMPSON, individually and as
personal representative and administrator
of the estate of JOSHUA SIMPSON,

Plaintiff,

v.

COMMONWEALTH OF VIRGINIA,
W. STEVEN FLAHERTY, and
JOHN DOES,

Defendants.



Case No.: 1:16-cv-162

NOTICE OF REMOVAL

The Defendants, the COMMONWEALTH OF VIRGINIA and W. STEVEN FLAHERTY (hereinafter "Defendants"), pursuant to 28 U.S.C. §§ 1441, 1443, and 1446, remove this civil action to the United States District Court for the Eastern District of Virginia, Alexandria Division from the Circuit Court of Fauquier County, on the following grounds:

1. On December 22, 2015, the Plaintiff filed her Complaint in the Circuit Court of Fauquier County (Case No. CL15-579).
2. The Plaintiff's Complaint names the Commonwealth of Virginia ("Commonwealth"), W. Steven Flaherty ("Flaherty") in his official capacity as Superintendent of the Virginia State Police ("VSP"), and unknown VSP Officers sued as "John Does" as defendants. The Complaint's allegations arise out of the execution of an emergency custody order, a search warrant, and a felony arrest warrant on Plaintiff's son ("Mr. Simpson") on October 6, 2014 through October 7, 2014. Mr. Simpson was ultimately apprehended and later died on October 10, 2014. *See* Complaint, ¶¶22-33.

3. The Complaint attempts to allege six (6) counts of recovery, including alleged “Violations of the Americans with Disabilities Act” under 42 U.S.C. §12131, *et seq.* (Count V) and “Excessive Force” in the claimed “Deprivation of Rights under the Fourth and Fourteenth Amendments and 42 U.S.C. §1983” (Count VI).¹ This Court has original jurisdiction over the Plaintiff’s federal question claims. *See* 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”)

4. The Complaint also attempts to allege counts of “Wrongful Death” pursuant to “statutory and common law of the Commonwealth of Virginia” (Count I), “Negligence” and “Gross Negligence” under “Virginia Common Law” (Counts II and III respectively), and “Liability of the Commonwealth” for the alleged negligence of its agents under “Virginia Common Law” (Count IV). This Court has supplemental jurisdiction over the Plaintiff’s state law claims, all of which arise out of the same case or controversy as the Plaintiff’s asserted federal statutory and constitutional claims. *See* 28 U.S.C. § 1367(a) (“[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy. . . .”).

5. Removal is also proper, pursuant to 28 U.S.C. § 1443, as the Complaint contains allegations of the denial of federally assured rights by persons acting under color of authority of law. (*See* Complaint ¶¶ 9, 19, 22, 24-26, 28, 30, 44, 65-69)

6. The Defendants Commonwealth and Flaherty were served with a summons, a copy of the Complaint, and Plaintiff’s Interrogatories and Requests for Production on January 21, 2016

¹ Count VI of the Complaint is improperly numbered “Count IV” on p.13 of the pleading.

and January 26, 2016 respectively. Accordingly, the Defendants timely file this Joint Notice of Removal pursuant to 28 U.S.C. § 1446(b).

7. The undersigned Assistant Attorney General will represent the Defendants Commonwealth and Flaherty in this matter. Based on information and belief, there has been no service requested on the unknown John Does. Thus, the “known and identified” Defendants which have been served, pursuant to 28 U.S.C. § 1446(b)(2), jointly request, consent to, and authorize undersigned counsel to remove this case to this Court from Fauquier County Circuit Court.

8. As the underlying state court action is pending in Fauquier County, removal to this Court – the Alexandria Division of the United States District Court for the Eastern District of Virginia – is appropriate because it is the district court of the United States for the district and division within which the state court action is pending. *See* 28 U.S.C. § 1441(a); Local Rule 3(B)(1).

9. Pursuant to 28 U.S.C. § 1446(a), a copy of “all process, pleadings and orders” on file in the state court action, which consists of copies of the summons, Complaint, Plaintiff’s Interrogatories, and Plaintiff’s Requests for Production are attached hereto as **Exhibit A**. The Defendant’s filed a Special Plea of Sovereign Immunity and Demurrer, attached hereto as **Exhibit B**. At the time of filing this Notice, the Fauquier County Circuit Court has entered no orders in this case.

10. The Defendants are providing written notice of the filing of this Notice of Removal to the Plaintiff and the Clerk of Fauquier County Circuit Court as required by 28 U.S.C. § 1446(d).

11. Pursuant to Federal Rule of Civil Procedure 81(c), the Defendants intend to file in this Court a timely Motion to Dismiss and Memorandum in Support.

12. Undersigned counsel represents, subject to Federal Rule of Civil Procedure 11, that the facts in this Joint Notice of Removal are true and correct to the best of his knowledge, information, and belief, and he signs this Joint Notice of Removal with that representation.

WHEREFORE, the Defendants, Commonwealth of Virginia and W. Steven Flaherty, pursuant to 28 U.S.C. §§ 1441, 1443, and 1446, respectfully request the removal of this civil action, originally filed in the Circuit Court for Fauquier County (Case No. CL15000579-00), to the United States District Court for the Eastern District of Virginia, Alexandria Division and that the Fauquier County Circuit Court hold no further proceedings in connection with this action.

Dated this the 17th day of February 2016.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA and
W. STEVEN FLAHERTY

By: /s/ Ryan D. Doherty

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**Counsel for Defendants Commonwealth of Virginia and W. Steven Flaherty*

CERTIFICATE OF SERVICE

I certify that, on this 17th day of February, 2016, the foregoing document was sent via UPS Overnight to the Clerk of Court – United States District Court for the Eastern District of Virginia – Alexandria Division – and a true copy of the foregoing was sent via first-class mail, postage prepaid to:

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